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August 27, 2008

Mariana C. Wilkinson
PO Box 1072
Gold Beach, Oregon 97444

Re: *Petition for Public Records Disclosure Order:*
Department of Transportation, Driver and Motor Vehicle Services Records

Dear Ms. Wilkinson:

This letter is the Attorney General's order on your petition for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. The petition, which we received on August 21, 2008, asks the Attorney General to direct the Department of Transportation, Driver and Motor Vehicle Services (DMV) to make available "the name of my accuser and specifically what was reported to DMV." This concerns a report which prompted DMV to request that you submit a Certificate of Vision form. For the reasons that follow, we respectfully deny your petition.

The Public Records Law confers a right to inspect any public records of a public body in Oregon, subject to certain exemptions and limitations. ORS 192.420. Any person denied the right to inspect or receive a copy of a public record of a state agency may petition the Attorney General to determine whether the record may be withheld. ORS 192.450(1).

Your petition states that you asked DMV to disclose the requested information. We spoke to Robert Reed, Manager of the Records Services Unit at DMV, about your petition. Mr. Reed confirms that you requested a copy of the information that was submitted to DMV concerning your vision, including the name of the reporter. On August 6, 2008, Deborah Rico of the DMV Driver Safety Unit, sent you a copy of the letter DMV sent to the reporter acknowledging receipt of the report, with the name and address of the reporter redacted. Ms. Rico also sent you a cover letter explaining that this was the only information from the Driver Safety file that DMV was able to release to you.

Mr. Reed told us that DMV denied your request because the report was submitted in confidence and DMV determined the report and the name and address of the reporter, is exempt from disclosure under the Public Records Law. ORS 192.502(4) exempts from disclosure:

> Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure.

The purpose of the exemption is to encourage individuals to voluntarily provide relevant information to a public body, with some reasonable assurance that the information will be kept confidential. OREGON ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (AG'S MANUAL) (2008) 74.

Five conditions must be met in order for the "submitted in confidence" exemption to apply:

- The informant must have submitted the information on the condition that the information would be kept confidential.
- The informant must not have been required by law to provide the information.
- The information itself must be of a nature that reasonably should be kept confidential.
- The public body must show that it has obliged itself in *good faith* not to disclose the information.
- Disclosure of the information must cause harm to the public interest.

AG'S MANUAL at 74-75.

For the following reasons, we conclude that the five elements required by ORS 192.502(4) have been met so as to exempt the petitioned information from disclosure. First, the individual who submitted the report on a DMV Driver Evaluation Request form did so in confidence, expressly requesting confidentiality by checking the appropriate box on the form. Second, the individual was not required by law to submit the report to DMV, but did so voluntarily. Third, the report is of a nature that reasonably should be kept confidential. In part, we reach this conclusion based on the fact that, in order to encourage reporting, DMV considered confidentiality of these reports to be of such importance that the agency adopted an administrative rule, OAR 735-076-0005, to oblige itself to maintain confidentiality. Also, we recognize that disclosure of the identity of individuals who provide information to DMV about their concerns as to a person's driving ability could have the effect of jeopardizing personal and professional relationships and there is a potential for harassment of reporters by those who are the subject of submitted reports. Fourth, DMV obliged itself in good faith not to disclose the reporter's identity through the cited administrative rule, OAR 735-076-0005.

Finally, we believe the public interest would suffer by disclosure of the record. By statute, DMV is responsible for determining whether a person is ineligible for a driver's license because that person's ability to drive safely is impaired due to a physical or mental disease or disability. ORS 807.060. DMV is also responsible for requesting a driver to reestablish eligibility for driving privileges by submitting a medical report of Certificate of Vision if DMV has reason to believe the person may no longer be qualified to hold a license or no longer able to safely operate a motor vehicle. ORS 807.340. To help fulfill its responsibility for monitoring the eligibility and continuing qualification of licensed drivers, and to insure that motor vehicles are being operated safely, DMV relies on letters, reports and other information from concerned citizens, law enforcement officials and health care providers. We believe that the public safety interest in having concerned citizens continue to provide such reports to DMV would suffer by disclosure of the record, with such disclosures discouraging others from submitting good faith reports of apparently unsafe drivers due to fears that personal or professional relationships will be jeopardized or fears of harassment or retribution. We do not find any basis to believe the report was submitted for the purpose of harassment, vindictiveness or any other similar motive and therefore conclude the public interest would suffer by disclosure of this information.

Based on this analysis, we conclude that the information you requested is exempt from disclosure under ORS 192.502(4).[1] Accordingly, we respectfully deny your petition.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

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c: Robert Reed, Manager of the Records Services Unit at DMV

[1] We have previously denied petitions for disclosure of this type of record. *See e.g.*, Public Records Order, July 21, 2005 (Jackson), Public Records Order , March 20, 2003 (Rask), Public Records Order , December 3, 1993 (Bowes); Public Records Order, April 14, 1992 (Hickman); Public Records Order, May 13, 1988 (Haim) and Public Records Order, April 28, 1988 (Jones).